IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2483 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNCIPAL CORPORATION

Versus

JYOTSNABEN WD/O VINODBHAI FAKIRBHAI

Appearance:

MR RR MARSHALL for Petitioner No. 1

..... for Respondent No. 1-8

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 08/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This Appeal under Section 173 of the Motor Vehicles Act is directed against the award and judgment dated 16.3.2000 passed in Motor Accident Claim Petition No. 1339/95 by Motor Accident Claims Tribunal, Ahmedabad City, whereby the Tribunal awarded the amount of compensation to the claimants who are the heirs of the victim who died in the accident.

2. It is submitted by Mr. R.R. Marshall, learned Counsel for the appellant Ahmedabad Municipal Corporation that the appeal is restricted to the point of contributory negligence and the application of multiplier. It is also stated that there is no need to call for R & P from the trial court considering the points taken in this appeal.

3. It is suggested from the impugned award and judgment that the deceased at the time of accident was 35 years old, the multiplier adopted by the Tribunal is of 15 years. As per the schedule, the multiplier, that would be applicable to the victim, falling in the age group of 30 to 35 years, would be maximum 17 years. The Tribunal has applied the multiplier of 15 years. It cannot be said that the Tribunal has in any manner erred in adopting the multiplier of 15 years when the deceased was in the age group of 30 to 35 years. There is no substance in the contention raised on this point.

4. As far as the question of contributory negligence is concerned, it is submitted by Mr. R.R. Marshall that the deceased who was on the scooter should also have been held contributory negligent in the accident since there is a head on collusion. The deceased was on the scooter. It is suggested from the impugned award, the accident took place on about 6.30 p.m.. The claimants witness PW-2 Indravadan Dungarbhai Mahera, the brother of the deceased, Exh.34, has been stated that on 8.9.1995 at about 6.15 p.m. the accident took place on the main road in front of Surti Lodge and the witness was returning on bicycle from Shahpur to his house towards Dariyapur. At that time, near Surti Lodge, one scooterist - i.e. deceased was going on road and at that time from opposite side, one truck of the AMTS came with full speed and dashed from the front side with the scooterist and the scooter had taken turn and the rear wheel of the truck ran over the head of the scooterist causing injuries. It is in the cross-examination, the witness deposed that there was traffic at the time of the accident and traffic signal was indicating for stopping and therefore the truck driver was in a haste and he had driven his truck with full speed to cross the signal whereas the

scooterist was going with normal speed towards left side.

5. It will be seen that the truck driver was in a haste and he drove the truck with full speed to cross the signal though the signal indicated for stopping. It has come in the evidence that the accident took place at about 6.15 p.m. which should be a peak hour for the public to return home. Having regard to the evidence discussed in the impugned award, we do not find that the appellant has been able to suggest any point which calls for consideration in the appeal and the appeal being devoid of merits, is liable to be summarily dismissed.

6. In the result, the appeal stands dismissed summarily at the admission stage.

7. In view of the above order, Civil Application No. 5744/2001 does not survive and is disposed of as having become infructuous.

(N.G.Nandi, J.)

(J.R. Vora, J.)

p.n.nair